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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/618,367	07/18/2000	Stan Jirman	APLE.P0005	8886
62224 7590 02/20/2008 ADELI & TOLLEN, LLP 1875 CENTURY PARK EAST SUITE 1360 LOS ANGELES, CA 90067			EXAMINER CAO, DIEM K	
			ART UNIT 2194	PAPER NUMBER
			MAIL DATE 02/20/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/618,367

Applicant(s)

JIRMAN ET AL.

Examiner

Diem K. Cao

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: NONE.
Claim(s) rejected: 1-45.
Claim(s) withdrawn from consideration: NONE.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attachment.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.


WILLIAM THOMSON
SUPERVISORY PATENT EXAMINER

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In the remarks, Applicant argued in substance that

- (1) Neither Kaler nor Ward disclose, teach or even suggest “a method that performs event object creation and logging on a single computer on which an application executes” because Kaler discloses a distributed computing system where the creation of what Kaler refers to as events and logging are performed on different computers and a local event concentrator transiently and temporally retains the occurrence of these events in the circular memory buffer for logging, i.e., Kaler discloses a distributed computing system where the creation of these occurrences and logging are performed on different computers, and not on one computer on which an application executes (page 2, line 18 – page 3, line 22 and page 6, line 1 - page 7, line 20 and page 9, line 4 – page 11, line 22),

- (2) Neither Kaler nor Ward teach a method that creates an event object for an event, and logs within the event object a start time, end time, and information regarding an event because “events” that are disclosed in Kaler are not event object that has logged within it a start time and end time, instead, the Kaler’s “events” are a number of different occurrences when a specified condition is met, and the “time” refers to a particular instance in time when the occurrence happened, thus, Kaler would have no use for both a start time and end time when each particular event occurs at only one particular instance in time (page 3, line 23 – page 4, line 21 and page 6, line 1 - page 7, line 20 and page 9, line 4 – page 11, line 22), and

- (3) Kaler does not teach a mechanism that is created by a foundational layer and executes independently of the application, instead, Kaler describes an IEC that monitors the execution process for particular occurrences in a data processing system, Kaler further teach that the IEC does not execute independently of the applications because he describes that the IEC

remains dormant in the process space of the applications until it is turn on (page 4, line 23 page 5, line 22 and page 7, line 21 – page 8, line 20 and page 12, lines 1-19).

Examiner respectfully disagrees the arguments:

- As to the point (1), Kaler teaches “the invention has utility in analyzing the performance of a software application that is executing on a distributed data processing system” (col. 3, lines 3-65 and col. 11, lines 16-22), i.e., examiner interprets “an application ” as “the software application that is executing on a distributed data processing system”, not the VSA running on a different computer. Thus, the arguments are not persuasive. If Applicant thinks the application is the VSA, i.e., monitoring program and not the program being monitored, then the claim should be clarified to reflect such distinction, then the limitations will be reconsidered.

- As to the point (2), Kaler teaches creating “events” (col. 12, lines 8-10), and the event has associated pre-defined fields (col. 16, lines 1-25), thus the “events” are event objects, which examiner fails to understand how Applicant said they are not “event objects”. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the Kaler’s invention “has utility in analyzing the performance of a software application that is executing on a distributed data processing system”, and Ward is directed to “a tool to evaluate and control a graphics application executing on the computer graphics system”, and logging start

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time and end time for an event (page 7, paragraphs 73-74) to know the duration of an event. It would have been obvious to one of ordinary skill in the art to apply the teaching of Ward to the system of Kaler because both inventions are in the same field, and knowing the duration of interested events would help in analyzing the performance of the software application.

- As to the point (3), claim 10 recites "a foundation layer upon which applications are built or executed", the "or" was used, so meeting one of the two meet the claim limitation. Kaler also teaches there is a LEC associated with each of the monitored applications, the VSA can activate or deactivate the LEC when it wants to start collecting events or stop collecting events, respectively (col. 11, lines 23-61), i.e., although the LEC is coupled to a respective process space, the LEC is executed independent of the monitored applications.

From the above reasons, the arguments are not persuasive and the rejection is maintained.